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9 January 19853 CBS Opens Libel Trial Defense, Asserts
Vietnam Documentary Was True

By M. A. FARBER

Lawyers for CBS yesterday opened their defense of a disputed 1982 documentary on the Vietnam War, saying they would prove both that it was true and that the people who made it believed it was true.

For 13 weeks, the documentary — "The Uncounted Enemy: A Vietnam Deception" — has been the subject of a \$120 million libel trial brought against the network and three other defendants by Gen. William C. Westmoreland, commander of American forces in Vietnam from 1964 to 1968.

At 10:30 A.M. yesterday, Dan M. Burt, the general's lawyer, rested the case for the plaintiff. The evidence, he told an intent jury in Federal District Court in Manhattan, controverted "what the broadcast said — that William Westmoreland deliberately deceived his superiors about the size of the enemy in Vietnam" in 1967.

"There was no suppression," Mr. Burt said in a five-minute interim summation. "No deception."

Seconds later, David Boies, the principal lawyer for CBS, stressed that only General Westmoreland's witnesses — 19 in all — had testified so far.

"We are starting the defendants' case," he told the jury with a trace of a smile, "and I would probably be overly optimistic if I promised you light at the end of the tunnel quite yet."

"I think you will be convinced — perhaps you are on the way now — I think you will certainly be convinced by the end of our case that this broadcast was true," Mr. Boies said. "But independent of that, I think there can simply be no doubt that the CBS people who put this broadcast together believed it was true and had awful good reason to believe it was true."

To prevail in his suit, Mr. Boies iterated, General Westmoreland must establish not only that the documentary was false but also that CBS knew that or acted with "reckless disregard" for whether it was true. The burden of proof is on the plaintiff.

General Westmoreland contends that CBS defamed him by saying he had purposely misled President Johnson and the Joint Chiefs of Staff about the strength and nature of the North Vietnamese and Vietcong in the year before the Tet offensive of January 1968. The CBS broadcast alleged a "conspiracy" by the General's command to "alter and suppress" the true data.

Apart from CBS, the defendants in the case are George Crile, the producer of the documentary; Mike Wallace, its narrator, and Samuel A. Adams, a former C.I.A. analyst who was a paid consultant to the network.

Judge Instructs Jury

Judge Pierre N. Leval — pacing the area behind his bench, his hands in his pockets — reminded the jurors yesterday of his instructions to "keep an open mind" throughout the trial and not to allow any "tentative" conclusions to harden prematurely.

"All right, Mr. Boies," Judge Leval said. "Your first witness."

Mr. Boies began the defense case by reading portions of the depositions of two witnesses who will not appear in person. They are Joseph Zigman, the associate producer of the documentary, and Dwain R. Gatterdam, a senior analyst for the C.I.A.

Mr. Zigman, who retired from CBS after 20 years following the broadcast in January 1982, said in his deposition that he had asked to be Mr. Crile's assistant on the project.

"I knew he was trustworthy, honest, a good reporter," Mr. Zigman said. Randy Mastro, a lawyer for CBS, asked Mr. Zigman whether he had changed his view of the producer during the making of the documentary.

"Not one bit," Mr. Zigman said.

On Monday, Ira Klein, the chief film editor for the broadcast, testified he had complained to Mr. Zigman about the validity of the program when it was being assembled in late 1981. But Mr. Zigman, in his deposition last February, said Mr. Klein was "just sort of worn out" by that stage. He himself could recall no complaints beyond those that he said were natural to any major film project.

"No one," Mr. Zigman said, challenged the "accuracy" of the documentary. There were times when individual points were questioned, he said, but "there was always the possibility of going back to the material that was available to us at the office and just clarify it, substantiate it. There was never at any time anything that was going to go into the broadcast or went into the broadcast that could not be substantiated and verified by some existing piece of paper."

Mr. Zigman described Mr. Adams — whom Mr. Burt has sought to depict as "obsessed" — as "cooperative" and "reliable."

Mr. Adams — whose research over 15 years was crucial to CBS — was also praised by Mr. Gatterdam when he

gave his deposition last October. Mr. Gatterdam, who had worked with Mr. Adams at the C.I.A. in 1968, said Mr. Adams was "meticulous and highly competent."

Moreover, Mr. Gatterdam said, he shared Mr. Adams's view that the military in Saigon had imposed an "arbitrary ceiling" of 300,000 on enemy strength in 1967; that the C.I.A. had mistakenly "caved in" to the military's position, and that, according to analyses by the C.I.A. after the Tet offensive, North Vietnamese infiltration in the fall of 1967 "averaged" 20,000 a month, four times the figure carried in official military records.

Because the military was "trying to show progress" in the war, Mr. Gatterdam said, it "ignored" much evidence that the enemy was "replenishing their forces" for the offensive.

Before he rested General Westmoreland's case, Mr. Burt read to the jury part of a letter Mr. Crile had sent Mr. Wallace around June 1982 in which Mr. Crile said he produced "the documentary I promised" — a work, he said, more carefully grounded than any "print piece dealing with such an important matter" that he had ever seen.

In his interim summation, Mr. Burt argued that General Westmoreland's superiors — as well as Mr. Adams and his C.I.A. colleagues — were given all the numbers on enemy size in 1967. That view, he said, was supported by contemporaneous documents introduced into evidence — documents, he said, that "don't lie."

Mr. Boies said he agreed that documents "capture forever the truth." And what they showed at this trial, he said, was that the military acted in 1967, not from legitimate reasons, but from "political" motivation.

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